



W.P. No.31790 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2024

Pronounced on : 29.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.31790 of 2013

and

M.P.No.2 of 2013

C.Amirthalingam

... Petitioner

Vs.

1.The Additional Chief Manager/MB/Mine-I,
(Disciplinary Authority),
O/o. Chief General manager/MINE-I & IA,
Block No.26, Neyveli Lignite Corporation Ltd.,
Neyveli – 607 803, Cuddalore _ District.

2.The Enquiry Officer /Mine – I & IA,
O/o. Chief General Manager / MINE-I & IA,
Block No.26, Neyveli Lignite Corporation Ltd.,
Neyveli – 607 803,
Cuddalore – District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari call for the records relating to the impugned proceedings of the 1st respondent in PROC.No.MI/P&A/DAC/278-186/2007, dated 09.04.2008, and quash the same.

For Petitioner : Mr.D.Balachandran

For R1 & R2 : Mr.N.Nithianandam



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ORDER

The petitioner herein was appointed as Industrial Worker Grade I (Mechanical) in the year 1992 in the Neyveli Lignite Corporation Limited and thereafter, he was promoted to the post of Technician – I. While, the petitioner was continuing in the said post, the respondent Corporation initiated disciplinary proceedings against the petitioner by issuing a charge memo dated 27.12.2007. The charges framed against the petitioner reads as under:

“CHARGES:

“It is reported that Shri.C.Amirthalingam, CPF No.38839, working as Tech.Gr.I in Middle Bench/Mine.I is unauthorisedly absenting himself from duty with effect from 02.11.2007 without leave letter and without prior permission from his superior. More over the individual is a habitual absentee as detailed below”.

In the year 2003 the individual has availed 115 days leave in 20 spells.

In the year 2004 the individual has availed 088 days leave in 06 spells.

In the year 2005 the individual has availed 129 days leave in 15 spells.

In the year 2006 the individual has availed 187



days leave in 18 spells.

In the year 2007 the individual has availed 211 days leave in 10 spells up to Nov.

The acts alleged as above, if established will constitute misconducts of

(a) Habitual absence without leave or without sufficient cause falling under sub-clause (vii) of NLC Standing Order – 46.

(b) Continuous absence for more than ten days without leave and without satisfactory cause falling under sub-clause (xxxi) of NLC Standing Order – 46.

and

(c) Breach of any standing orders or any rules framed under these orders falling under sub-clause (xxxviii) of Standing Order – 46.”

2. As the petitioner failed to submit any explanation in response to the said charge memo dated 27.12.2007, an enquiry officer was appointed through proceedings dated 04.01.2008. Thereafter, the enquiry officer conducted enquiry into the matter on 11.01.2008, 21.01.2008 and 28.01.2008 and submitted Ex-parte report on 07.02.2008. It was thereafter, a show cause notice dated 16.02.2008 was issued while furnishing a copy of



the report of enquiry officer calling upon the petitioner to show cause as to why the punishment of removal from service of the Corporation with effect from the date on which the individual last attended duty be not imposed. As the petitioner failed to respond to the said show cause notice, and the said show cause notice was also could not be served on the petitioner for want of his availability either in the Corporation or at the addresses where he supposed to be available, a paper publication dated 27.03.2008 was issued by the Corporation requiring the petitioner to collect the copy of the show cause notice, within seven days from the date of such publication. As the petitioner failed to respond even to the said publication, final order dated 09.04.2008 came to be passed by the 1st respondent imposing the punishment of removal from service from the Corporation with effect from the date on which the individual last attended duty. A copy of the said final order was communicated to the petitioner on 16.04.2008.

3. It was thereafter, the petitioner claims to have submitted a representation dated 14.10.2008 before the respondent requesting for reinstatement into service and thereafter, once again another representation was claimed to have been submitted by the petitioner on 04.09.2012. It was



thereafter, the petitioner approached this Court by filing the present writ petition challenging the order of punishment dated 09.04.2008 passed by the 1st respondent contending that he has discharged his duties after his initial appointment in the year 1992 for more than ten years and thereafter, because of the illness suffered by him, he was constrained to remain absent by submitting medical certificates and he could not participate in the process of enquiry, as he was seriously ill and admitted in the Hospital at the relevant point of time.

4. The respondents filed counter affidavit stating that the petitioner is a workman governed by Certified Standing Orders and therefore, he has an effective alternative remedy before the forum under the provisions of the Industrial Disputes Act, 1947 especially in the context of several disputed questions of fact that would arise for consideration in the present writ petition. It is also further contended that the corporation as such is not impleaded as a party respondent, and only its officers were impleaded and therefore, the writ petition is not maintainable. It is also contended that the writ petition is hopelessly hit by principles of delay and laches, as the present writ petition is filed five years after passing of the final order. It is also



further contended that the petitioner is habituated to absenteeism right from the year 2003, till the date of his removal from service. It is also further stated that, inspite of affording repeated opportunities to the petitioner, the petitioner failed to avail opportunity afforded to him either to respond to the charge memo or to participate in the proceedings of the enquiry or atleast to respond to the show cause notice issued by the 1st respondent proposing to impose the punishment of removal from service. It is also further contended that the absenteeism of the petitioner from the year 2003 to 2007 was never regularized as contended by the petitioner.

5. The learned counsel appearing for the respondents also placed reliance on the decision of the Hon'ble Apex Court in the cases of ***State of Rajasthan and others Vs. Bhupendra Singh*** reported in ***2024 SCC Online SC 1908*** and ***L&T Komatsu Limited Vs. N.Udayakumar*** reported in ***(2008) 1 SCC 224***, on the ground of habitual absenteeism, and also on the scope of interference by this Court, in the matter of disciplinary proceedings.

6. Heard Mr.D.Balachandran, learned counsel for the petitioner and



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Mr.N.Nithianandam, learned counsel for the respondents.

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7. As seen from the charge memo, the charge that is levelled against the petitioner appears to be grave, as the same is over a period of five years from 2003 to 2008. The petitioner is stated to have been absent from his duties for a period of 115, 88, 129, 187 & 211 days during the years 2003, 2004, 2005, 2006 and 2007 respectively. It is not in dispute that the petitioner remained absent for the number of days mentioned above during the said years. Though the petitioner claimed to have submitted leave application together with medical certificates and the said period was regularized by granting appropriate leave, the same is disputed by the respondents. Whether the absenteeism of the petitioner for the above said periods is justified or not, is not the matter for consideration in this writ petition.

8. After having heard the learned counsel on either side at length, this Court felt that, the issue that needs to be examined by this Court in the present writ petition is only in the narrow compass i.e., to examine whether



the respondents are justified in concluding the enquiry proceedings 'Ex-parte' resulting in imposing the punishment of removal from service behind the back of the petitioner and concluding the said proceedings within a short span of about three months i.e. commencing the disciplinary proceedings on 27.12.2007 and concluding the same on 09.04.2008, in the facts and circumstances of the case or not. To examine this aspect, it is necessary to refer to certain dates and events.

9. It is the specific case of the petitioner that he met with an accident while working as Conveyor attender on 04.09.2007 resulting in suffering severe injuries at his left shoulder and admitted in the Government Hospital, Neyveli Lignite Corporation Limited. It is the further case of the petitioner that he was admitted in the Government Hospital, Neyveli Lignite Corporation Limited for severe chest pain on 13.02.2008 and thereafter, he was shifted to Apollo Hospitals, Chennai and there, he was admitted as in-patient on 20.02.2008 and discharged on 26.02.2008. Thereafter, once again the petitioner was admitted on 19.04.2008 and discharged on 29.04.2008, and it was on 22.04.2008 CABG Surgery was operated on the petitioner. It was thereafter, again the petitioner was admitted on 19.05.2008 and



discharged from the Hospital on 09.06.2008, and once again the petitioner was admitted to the Apollo Hospital on 04.07.2008 and discharged on 12.07.2008. There is no serious dispute about the illness suffered by the petitioner.

10. While so, the disciplinary proceedings that were initiated against the petitioner on 27.12.2007 were concluded on 09.04.2008. It was the period during which the petitioner was undergoing treatment for his Cardiac problem. It is the period during which the respondents claimed to have sent notices to the residential address of the petitioner, and all such notices were returned as 'unclaimed' and none of the notices were admittedly served on the petitioner. While, the petitioner was suffering from severe ill-health relating to heart problem, the respondents have concluded the disciplinary proceedings 'Ex-parte' resulting in passing of the impugned order dated 09.04.2008. Though the relevant record pertaining to the Apollo Hospitals is placed before this Court along with the writ petition, there is no serious denial of the said material nor the averments made in the affidavit filed in support of the writ petition are denied. The respondents only tried to justify their action on the ground that they have issued sufficient number of notices, though not



served on the petitioner, and they have followed the procedure that is required to be followed in the disciplinary proceedings.

11. In the absence of any dispute about the serious illness suffered by the petitioner during which period the disciplinary proceedings were conducted by the the respondents, the Ex-parte enquiry proceedings, and the impugned order passed by the respondents and the action of the respondents cannot be said to be just and reasonable in the context of the facts noted above.

12. No doubt, though the impugned order was served on the petitioner on 16.04.2008, the petitioner has chosen to challenge the said order only in the year 2013 by filing the present writ petition, and there is delay of about five years in approaching this Court. But in this context, it is necessary to notice that the petitioner has submitted two representations on 14.10.2008 and 04.09.2012 before the respondents and the same is also not disputed. The respondents failed to respond to the said representations and therefore, the petitioner having awaited for the respondents to respond on the said representations and then, approached this Court by filing the present writ



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petition.

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13. No doubt, the petitioner being a workman has an affective and efficacious alternative remedy before forums constituted under the provisions of Industrial Disputes Act, 1947, but this Court is not inclined to non-suit the petitioner on that ground, as the jurisdiction of this Court under Article 226 of the Constitution of India cannot be refused to be exercised only on the ground of availability of an alternative remedy, especially in the context of the fact that this writ petition has been pending before this Court for the past about eleven years. In this context, it is also necessary to notice that though this writ petition was filed in the year 2013, for the reasons best known, the respondents have not chosen to file their counter affidavit till 06.06.2024, thereby, disabling this Court from disposing of the writ petition either on the ground of alternative remedy or on merits for over a decade. Thus, the respondents are responsible for the delay in disposal of the present writ petition and therefore, they cannot be permitted to contend that the petitioner should be relegated to avail the remedy under the provisions of Industrial Disputes Act, 1947.



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14. Be that as it may, it is settled legal position that the availability of remedy before an alternative forum is only a self-imposed restriction, and the same would not operate as an absolute bar to this Court to exercise its jurisdiction under Article 226 of Constitution of India. After all, the allegation is only a case of habitual absenteeism against the petitioner. No doubt, habitual absenteeism is to be treated as a grave misconduct, but the same would depend upon various facts and surrounding circumstances. Though the petitioner is alleged to be absent for number of days during the years 2003 to 2007, for the reasons best known, the respondent Corporation has not chosen to initiate disciplinary proceedings till the year 2007, and it was only in the year 2007, when the petitioner met with an accident during the course of his employment on 04.09.2007 and immediately thereafter, the respondents have chosen to initiate the disciplinary proceedings and concluded the same in a jet speed by conducting Ex-parte enquiry and passed Ex-parte orders. It is only on this ground, this Court is inclined to tilt towards the workman in the facts and circumstances of the instant case. But this Court is also conscious of the fact that the petitioner, who has not disputed about his continued absenteeism over a period of years 2003 to 2007, cannot also be shown undue lenience by granting the relief as sought for in the



present writ petition.

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15. The petitioner for the reasons best known has not chosen to question the impugned order immediately on coming to know about the same on 16.04.2008, but awaited for a period of five years and then approached this Court. In the normal course, the punishment of removal from service resulting in taking away the livelihood of the petitioner is bound to be declared as disproportionate to the charge of absenteeism. But in the facts and circumstances of the case, this Court is not inclined to interfere with the punishment on the ground of dis-proportionality, but is inclined to interfere with the impugned order in the light of the conclusions arrived at herein above, i.e., the arbitrary manner and undue haste with which the disciplinary proceedings were concluded against the petitioner within a period of about three months, while the petitioner was undergoing several health issues.

16. This Court has carefully considered the decisions relied upon by the learned counsel for the respondents and is in respectful agreement with the ratio laid down by the Hon'ble Apex Court.



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17. No doubt, the scope of interference of this Court while exercising its certiorari jurisdiction is very limited. It is only in the cases of violation of fundamental rights, or when the findings recorded or the procedure that was followed during the course of disciplinary proceedings is vitiated, or the conclusions arrived at are perverse, this Court is entitled to interfere with such proceedings. As already noted above, the respondents have concluded the disciplinary proceedings with undue haste and with jet speed, when the petitioner was disabled to participate in the disciplinary proceedings and therefore, the entire enquiry proceedings are vitiated because of the arbitrary action of the respondents and therefore, this Court is of the considered view that, it is a fit case where this Court is bound to interfere with the impugned order. As this Court is not inclined to interfere with the impugned orders on the ground dis-proportionality, the decision of the Hon'ble Apex Court in the case of *L&T Komatsu Ltd. Vs. N.Udayakumar* reported in *(2008) 1 SCC 224*, need not be considered in elaborate.

18. In the light of the above, the impugned order dated 09.04.2008 is set aside with a consequential direction to the respondents to reinstate the



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petitioner into service. However, the petitioner shall not be entitled for any backwages or for counting of the service with effect from 09.04.2008 till the date of reinstatement for any purpose. However, the services rendered by the petitioner prior to 09.04.2008 shall be taken into consideration for all purposes. Further, the respondents are also granted liberty to take appropriate action, if they so desire, in accordance with law by duly affording sufficient opportunity to the petitioner.

19. Accordingly, this writ petition is allowed to the extent indicated above. The connected miscellaneous petitions, if any, shall closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

To:

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(Disciplinary Authority),

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dpa

Pre-Delivery Order made in
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